Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

# Message Text

PAGE 01 STATE 310935
ORIGIN L-03

INFO OCT-01 EUR-12 ISO-00 OES-07 SS-15 PM-05 IO-13
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NSC-05 EB-08 NRC-05 DODE-00 SP-02 /108 R

DRAFTED BY L/N:RJBETTAUER:RDSLOAN:MCP
APPROVED BY L/OES:MEHOINKES
OES/NET - MR. NOSENZO
S/AS - MR. KELLEY
T/D - MR. WELCH ; NRC:MR GUHIN
PM/NPO - MR. OPLINGER
IO/SCT - MS. JILLSON
L - MR. MICHEL; NRC:MR STOIBER
DOE - MR. BENGELSDORF
ACDA - MR. VAN DOREN
----------047782 310508Z /14
P 310023Z DEC 77
FM SECSTATE WASHDC
TO AMCONSUL VIENNA PRIORITY

C O N F I D E N T I A L STATE 310935

E.O. 11652: N/A

TAGS: IAEA, TECH, MNUC, ENRG

SUBJECT: AMENDMENT TO US-IAEA AGREEMENT FOR COOPERATION

REFS: (A) STATE 262418 (B) VIENNA 9824

1. WE HAVE REVIEWED MISSION COMMENTS CONTAINED REF (B) AND PREPARED A REVISED DRAFT OF AMENDMENT (TRANSMITTED PARA 4 BELOW), WHICH WE REQUEST YOU PROVIDE AGENCY WITH VIEW TO CONCLUDING AMENDMENT FOR APPROVAL AT FEBRUARY BOARD, IF POSSIBLE.

CONFIDENTIAL

PAGE 02 STATE 310935

2. WE HAVE INCORPORATED MANY OF MISSION'S TECHNICAL COMMENTS AND HAVE MADE SOME CHANGES TO MORE CLOSELY FOLLOW LANGUAGE IN OUR MODEL AGREEMENT AND THE PENDING NON-PROLIFERATION LEGISLATION. OUR REASONS FOR NOT INCLUDING CERTAIN OF MISSION'S SUGGESTED REVISIONS FOLLOW:

PREAMBLE: WE PREFER ALL TEXTS OF AMENDMENT TO BE IDENTICAL AND THUS DO NOT AGREE THAT U.S. SHOULD APPEAR FIRST IN ONE VERSION AND SECOND IN OTHER. WE CONSIDER ORDER OF NAMES IMMATERIAL, AND WOULD HAVE NO OBJECTION TO HAVING

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

IAEA APPEAR FIRST IN ALL VERSIONS.

ARTICLE 1: WE INTENTIONALLY DROPPED WORD "PEACEFUL" TO EXCLUDE DECLARED MILITARY NUCLEAR ACTIVITIES IN STATES NOT PARTY TO NPT, SINCE SUCH STATES HAVE NOT MADE NPT-TYPE NON-EXPLOSIVE PLEDGE. LAST SENTENCE OF ARTICLE 1 IS THUS ESSENTIAL TO CLARIFY THAT FOR NPT PARTIES, SAFEGUARDS AGREEMENT PURSUANT TO NPT (I.E., WITH POSSIBILITY OF DECLARED MILITARY ACTIVITIES EXCLUDED FROM SAFEGUARDS PURSUANT TO INFCIRC/153 PROCEDURES) WILL BE CONSTRUED TO MEET THE FULL-SCOPE SAFEGUARDS CONDITION. IN ADDITION, WE DO NOT WANT A FORMULA AS OPEN-ENDED AS "UNLESS OTHERWISE AGREED BY THE PARTIES", FOR THIS WOULD BE SEEN IN U.S. AND BY CONGRESS AS PROVIDING AN AVENUE FOR BACKING OFF THE PRESIDENT'S COMMITMENT TO FULL SCOPE SAFEGUARDS.

ARTICLE II (AMENDING ARTICLE V): IN PARA (A) WE SEE NO DIFFICULTY WITH USE OF TERMS "COVERAGE PROVISIONS" AND "GUIDELINES"; ORDINARY MEANING OF THESE WORDS (USED BY LONDON NUCLEAR SUPPLIERS GROUP) SEEMS CLEAR, BUT WE WILL RECONSIDER IF AGENCY HAS PROBLEM. RE PARA (B), WE NOTE THAT IN U.S. PENDING AGREEMENT WE HAVE DECIDED BETTER AND MORE MODERN USEAGE WOULD BE USE OF "PEACEFUL NUCLEAR COOPERA-

CONFIDENTIAL

PAGE 03 STATE 310935

TION," "NUCLEAR EXPLOSIVES", ETC. WE ALSO NOTE THAT WE HAVE REDRAFTED CERTAIN PARAS TO REFLECT MOST RECENT CHANGES IN U.S. BILATERAL MODEL AGREEMENT FOR COOPERATION (WHICH WAS USED AS A BASIS FOR WHAT WE GAVE IRAN SEVERAL WEEKS AGO.) WHILE WE HAVE ATTEMPTED TO CLARIFY PROVISIONS WHERE POSSIBLE, WE DO NOT REPEAT NOT BELIEVE WE HAVE FLEXIBILITY TO VARY PROVISIONS FROM THOSE FOUND IN ALL VERSIONS OF PENDING BILLS.

3. WE HAVE ADDED NEW PARA (H) TO ARTICLE V OF THE AGREEMENT AS FOLLOWS:

"(H) NO SENSITIVE NUCLEAR TECHNOLOGY MAY BE TRANSFERRED PURSUANT TO THIS AGREEMENT UNLESS SPECIFICALLY PROVIDED BY AN AMENDMENT TO THIS AGREEMENT OR BY A SUBSEQUENT SEPARATE AGREEMENT. "SENSITIVE NUCLEAR TECHNOLOGY" MEANS ANY INFORMATION (INCLUDING INFORMATION INCORPORATED IN EQUIPMENT OR FACILITIES) WHICH IS NOT AVAILABLE TO THE PUBLIC AND WHICH IS IMPORTANT TO THE DESIGN, CONSTRUCTION, FABRICATION, OPERATION OR MAINTENANCE OF ANY FACILITY DESIGNED OR USED PRIMARILY FOR URANIUM ENRICHMENT, REPROCESSING OF NUCLEAR FUEL, HEAVY WATER PRODUCTION, OR FABRICATION OF NUCLEAR FUEL CONTAINING PLUTONIUM OR SUCH OTHER INFORMATION AS EITHER PARTY MAY DESIGNATE PRIOR TO ITS TRANSFER.

MISSION SHOULD BE ADVISED THAT SUCH MENTION OF SENSITIVE

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

NUCLEAR TECHNOLOGY IS REQUIRED BY PENDING LEGISLATION FOR
ANY NEW AMENDED AGREEMENTS FOR COOPERATION. WE HAVE DE-
FINED SENSITIVE NUCLEAR TECHNOLOGY HERE TO AVOID OPENING
UP DISCUSSIONS OF ARTICLE I WHERE OTHER DEFINITIONS ARE

SET FORTH.

4. BEGIN TEXT OF DRAFT AMENDMENT:

CONFIDENTIAL

PAGE 04 STATE 310935

AMENDMENT TO THE AGREEMENT FOR COOPERATION BETWEEN THE
U.S.A. AND THE IAEA.

THE U.S.A. AND THE INTERNATIONAL ATOMIC ENERGY AGENCY,
DESIRING TO AMEND THE AGREEMENT FOR COOPERATION BETWEEN
THE U.S.A. AND THE IAEA, SIGNED AT VIENNA ON 11 MAY 1959
AS AMENDED (HEREINAFTER REFERRED TO AS THE "AGREEMENT FOR
COOPERATION"),

AGREE AS FOLLOWS:

ARTICLE 1

ARTICLE II OF THE AGREEMENT FOR COOPERATION IS AMENDED
BY ADDING THE FOLLOWING PARAGRAPH:

E. NO MATERIAL, EQUIPMENT OR FACILITIES MADE AVAILABLE
TO THE AGENCY PURSUANT TO THIS ARTICLE UNDER A PROJECT
AGREEMENT ENTERED INTO AFTER FEBRUARY (EFFECTIVE DATE)
OF AGREEMENT) SHALL BE USED IN ANY AGENCY ACTIVITIES IN A
NON-NUCLEAR WEAPON STATE MEMBER OR GROUP OF STATE MEMBERS
THAT DOES NOT, AT THE TIME OF TRANSFER, ACCEPT AGENCY
SAFEGUARDS WITH RESPECT TO ALL NUCLEAR ACTIVITIES WITHIN
ITS TERRITORY, UNDER ITS JURISDICTION OR CARRIED OUT UNDER
ITS CONTROL ANYWHERE. IMPLEMENTATION OF A SAFEGUARDS
AGREEMENT PURSUANT TO ARTICLE III (4) OF THE TREATY ON
THE NON-PROLIFERATION OF NUCLEAR WEAPONS SHALL BE CONSIDERED
TO FULFILL THE CONDITION STATED IN THE FOREGOING SENTENCE."

ARTICLE 2

ARTICLE V OF THE AGREEMENT FOR COOPERATION IS AMENDED AS
FOLLOWS:
CONFIDENTIAL

PAGE 05 STATE 310935

"THE AGENCY GUARANTEES, TO THE FULL EXTENT OF ITS STATUTORY
POWERS, THAT:

"(A) THE SAFEGUARDS SET FORTH IN THE AGENCY STATUTE SHALL

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

BE MAINTAINED AND IMPLEMENTED AS PROVIDED IN THE AGENCY STATUTE WITH RESPECT TO MATERIAL, EQUIPMENT OR FACILITIES, MADE AVAILABLE BY THE U.S. OR PERSONS UNDER ITS JURISDICTION FOR USE IN AGENCY ACTIVITIES, WITH DURATION AND COVERAGE PROVISIONS IN CONFORMANCE WITH THE GUIDELINES OF AGENCY BOARD OF GOVERNORS DOCUMENT GOV/1621 OF AUGUST 20, 1973. ANY AGREEMENT RELATING TO SUCH AGENCY ACTIVITIES SHALL MAKE PROVISION FOR THE APPLICATION OF SAFEGUARDS BY THE U.S. IN THE RECIPIENT STATE IN THE EVENT THE AGENCY IS, FOR ANY REASON, UNABLE TO CONTINUE TO APPLY AGENCY SAFEGUARDS. ANY SUCH AGREEMENT SHALL ALSO PROVIDE THAT UPON THE REQUEST OF THE U.S., THE RECIPIENT STATE OR STATES SHALL REPORT OR PERMIT THE AGENCY TO REPORT TO THE U.S. ON THE STATUS OF ALL INVENTORIES OF SOURCE OR SPECIAL NUCLEAR MATERIALS SUBJECT TO AGENCY SAFEGUARDS; HOWEVER, IN THE CASE OF AN AGENCY MEMBER OR MEMBERS PARTY TO THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS, SUCH REPORTS NEED ONLY COVER INVENTORIES REQUIRED TO BE SAFEGUARDED UNDER THIS PARAGRAPH.

"(B) NO MATERIAL,EQUIPMENT OR FACILITIES, TRANSFERRED PURSUANT TO THIS AGREEMENT, AND NO MATERIAL USED IN OR PRODUCED THROUGH THE USE OF ANY SUCH MATERIAL, EQUIPMENT OR FACILITIES, WILL BE USED FOR NUCLEAR WEAPONS OR ANY NUCLEAR EXPLOSIVE DEVICE, FOR RESEARCH ON OR DEVELOPMENT OF NUCLEAR WEAPONS OR ANY NUCLEAR EXPLOSIVE DEVICE, OR FOR ANY OTHER MILITARY PURPOSE.

"(C) MATERIAL, EQUIPMENT OR FACILITIES TRANSFERRED OR RETRANSFERRED PURSUANT TO THIS AGREEMENT AND ANY SPECIAL NUCLEAR MATERIAL USED IN OR PRODUCED THROUGH THE USE OF SUCH CONFIDENTIAL



MATERIAL, EQUIPMENT OR FACILITIES MAY BE RETRANSFERRED ONLY IN ACCORDANCE WITH THE AGENCY STATUTE AND THIS AGREEMENT AND THEN ONLY IF THE PARTIES AGREE.

"(D) MATERIAL TRANSFERRED PURSUANT TO THIS AGREEMENT AND MATERIAL USED IN OR PRODUCED THROUGH THE USE OF MATERIAL, EQUIPMENT OR FACILITIES TRANSFERRED PURSUANT TO THIS AGREEMENT MAY BE STORED BY AGENCY MEMBERS TO THE EXTENT CONSISTENT WITH THE AGENCY STATUTE, EXCEPT THAT PLUTONIUM, OR URANIUM 233 (EXCEPT AS CONTAINED IN IRRADIATED FUEL ELEMENTS) OR URANIUM ENRICHED TO TWENTY PERCENT OR GREATER IN THE ISOTOPE 235 WILL BE STORED ONLY IN FACILITIES THAT HAVE BEEN AGREED TO IN ADVANCE BY THE PARTIES.

"(E) NO MATERIAL TRANSFERRED PURSUANT TO THIS AGREEMENT AND NO MATERIAL USED IN OR PRODUCED THROUGH THE USE OF ANY MATERIAL, EQUIPMENT OR FACILITIES TRANSFERRED PURSUANT TO THIS AGREEMENT WILL BE REPROCESSED, OR (IN THE CASE OF PLUTONIUM, URANIUM 233, URANIUM ENRICHED TO TWENTY PERCENT

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

OR GREATER IN THE ISOTOPE 235, OR IN THE CASE OF OTHER MATERIAL WHICH HAS BEEN IRRADIATED) OTHERWISE ALTERED IN FORM OR CONTENT UNLESS THE PARTIES AGREE.

"(F) URANIUM TRANSFERRED FROM THE U.S. PURSUANT TO THIS AGREEMENT AND URANIUM USED IN ANY MATERIAL OR EQUIPMENT SO TRANSFERRED MAY BE ENRICHED UP TO TWENTY PERCENT IN THE ISOTOPE 235 AFTER TRANSFER ONLY IF THE PARTIES AGREE. SUCH URANIUM WILL NOT BE ENRICHED AFTER TRANSFER TO TWENTY PERCENT OR GREATER IN THE ISOTOPE 235 UNLESS SPECIFICALLY PROVIDED BY AN AMENDMENT TO THIS AGREEMENT OR BY A SUBSEQUENT SEPARATE AGREEMENT.

"(G) ADEQUATE PHYSICAL PROTECTION SHALL BE MAINTAINED WITH CONFIDENTIAL

PAGE 07 STATE 310935

RESPECT TO ANY MATERIAL, EQUIPMENT OR FACILITIES TRANSFERRED PURSUANT TO THIS AGREEMENT OR USED IN OR PRODUCED THROUGH THE USE OF ANY MATERIAL, EQUIPMENT OR FACILITIES TRANSFERRED PURSUANT TO THIS AGREEMENT. THE PARTIES AGREE TO THE LEVELS FOR THE APPLICATION OF PHYSICAL PROTECTION SET FORTH IN THE ANNEX, WHICH LEVELS MAY BE MODIFIED BY MUTUAL CONSENT OF THE PARTIES WITHOUT AMENDMENT TO THIS AGREEMENT. ADEQUATE PHYSICAL PROTECTION MEASURES SHALL BE MAINTAINED IN ACCORDANCE WITH SUCH LEVELS. THESE MEASURES SHALL AS A MINIMUM PROVIDE PROTECTION COMPARABLE TO THAT SET FORTH IN AGENCY DOCUMENT INFCIRC/225/REV.1,ENTITLED, "THE PHYSICAL PROTECTION OF NUCLEAR MATERIALS",

AS IT MAY BE UPDATED.

"(H) NO SENSITIVE NUCLEAR TECHNOLOGY MAY BE TRANSFERRED PURSUANT TO THIS AGREEMENT UNLESS SPECIFICALLY PROVIDED BY AN AMENDMENT TO THIS AGREEMENT OR BY A SUBSEQUENT SEPARATE AGREEMENT. "SENSITIVE NUCLEAR TECHNOLOGY" MEANS ANY INFORMATION (INCLUDING INFORMATION INCORPORATED IN EQUIPMENT OR FACILITIES) WHICH IS NOT AVAILABLE TO THE PUBLIC AND WHICH IS IMPORTANT TO THE DESIGN, CONSTRUCTION, FABRICATION, OPERATION OR MAINTENANCE OF ANY FACILITY DESIGNED OR USED PRIMARILY FOR URANIUM ENRICHMENT, REPROCESSING OF NUCLEAR FUEL, HEAVY WATER PRODUCTION, OR FABRICATION OF NUCLEAR FUEL CONTAINING PLUTONIUM OR SUCH OTHER INFORMATION AS EITHER PARTY MAY DESIGNATE PRIOR TO ITS TRANSFER.

(I) IF, AT ANY TIME FOLLOWING THE ENTRY INTO FORCE OF THIS AMENDMENT, A NON-NUCLEAR WEAPONS MEMBER STATE IN WHICH THERE IS AN AGENCY ACTIVITY INVOLVING MATERIAL, EQUIPMENT OR FACILITIES TRANSFERRED PURSUANT TO THIS AGREEMENT:

(1) DOES NOT ACCEPT SAFEGUARDS AS CONTEMPLATED BY

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009



PARAGRAPH E OF ARTICLE II,

(2) DOES NOT COMPLY WITH THE PROVISIONS OF ARTICLE V,

(3) DETONATES A NUCLEAR EXPLOSIVE DEVICE,

(4) TERMINATES OR ABROGATES AGENCY SAFEGUARDS, OR

(5) MATERIALLY VIOLATES AN AGENCY SAFEGUARDS AGREEMENT,
THE UNITED STATES SHALL HAVE THE RIGHT TO:

(I) CEASE FURTHER COOPERATION WITH THE MEMBER UNDER THIS AGREEMENT; AND

(II) REQUIRE THE RETURN OF ANY MATERIAL, EQUIPMENT OR FACILITIES SUBJECT TO THIS AGREEMENT."

ARTICLE 3

THIS AMENDMENT SHALL ENTER INTO FORCE ON THE DATE ON WHICH EACH PARTY SHALL HAVE RECEIVED FROM THE OTHER PARTY WRITTEN NOTIFICATION THAT IT HAS COMPLIED WITH ALL REQUIREMENTS FOR SUCH ENTRY INTO FORCE.

IN WITNESS WHEREOF, THE UNDERSIGNED REPRESENTATIVES HAVE SIGNED THIS AMENDMENT PURSUANT TO DULY CONSTITUTED AUTHORITY.

DONE AT VIENNA, IN DUPLICATE, THIS DATE OF 1978.

FOR THE UNITED STATES OF AMERICA:

FOR THE INTERNATIONAL ATOMIC ENERGY AGENCY:



4. BEGIN TEXT OF ANNEX:

PURSUANT TO PARAGRAPH (G) OF ARTICLE V, THE AGREED LEVELS OF PHYSICAL PROTECTION TO BE ENSURED BY THE COMPETENT NATIONAL AUTHORITIES IN THE USE, STORAGE AND TRANSPORTATION OF THE MATERIAL LISTED IN THE ATTACHED TABLE SHALL AS A MINIMUM INCLUDE PROTECTION CHARACTERISTICS AS FOLLOWS: (INSERT IDENTICAL MATERIAL AS CONTAINED IN MALAYSIAN ANNEX B, TRANSMITTED STATE 278636). CHRISTOPHER



Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

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# Message Attributes

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**TAGS:** TECH, MNUC, ENRG, US, IAEA
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**Type:** TE
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22 May 2009
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